

REMARKS

In the Office Action, the restriction requirement was made final. Thus, the non-elected claims have been cancelled by this Amendment subject to being later filed in a divisional application(s).

Also, submitted herewith is an IDS listing a number of references that the Examiner may wish to consider, including those set forth in the specification.

The Examiner objected to the drawings relative to the rear appendages set forth in claim 2. In response, the Examiner is referred to Figures 1-5, 7 and 10 where the rear appendages are referred to by the reference number 10. Also, the Examiner is referred to Par. [0021] where the "rear two appendages 10" are discussed. With this explanation, it is submitted that the drawings are satisfactory as they presently exist.

As to the form of the claims, the Examiner first objected to minor issues in claims 1 and 9. These two issues have been corrected by this Amendment.

Also as to the form of the claims, the Examiner secondly rejected claims 1-6, 8-9, 14-15, 27 and 32-34 under 35 USC § 112, second paragraph, as being indefinite for various reasons. By this Amendment, all of these claims have been amended in one way or another to overcome the Examiner's objections. It is believed that the form of the claims is now proper and the § 112 rejection has been overcome.

On the merits, claims 1-6, 8-9, 14-15, 27, 32 and 34 were rejected under 35 USC § 102 as being fully met by the EP '394 reference (EP 1,260,394). In addition, claim 33 was rejected under 35 USC § 103(a) as being unpatentable over the EP '394 reference in view of the Beerman et al. patent (U.S. No. 2,836,457). By this Amendment, all of these

claims have been amended in one way or another and are believed to be patentable over these references.

In particular, claim 1 has been withdrawn and replaced by new claim 36. This is the only independent claim in the case. Claim 36 has been drafted to overcome the § 112 issues, and to better distinguish it from the prior art. It is submitted that new claim 36, together with all of the claims dependent therefrom, namely claims 3-6, 8, 14-15, 27, 32-34 and 37, are allowable. In this regard, claim 37 is also new and replaces former claim 2 which has been cancelled.

Claim 36 contains, in part, a folding top assembly with an outer frame member and a cover member positioned inside the frame member. The frame member has two half-element members which are substantially aligned with each other when the folding top is in the closed position, and positioned on top of each other and form a C-shape when the folding top is in the open position. The invention is particularly suitable for use with a vehicle which has a mid or rear engine and especially a vehicle with a transparent rear lid over the engine.

EP '394 does not disclose or suggest such a folding top assembly wherein the members form a C-shape in the open position. It is clear from Figures 1-4 of EP '394 that the frame supports 5 and 6 do not have a central portion covered by a cover member which is mobile between a position of engagement and a position of disengagement, so that the folding top in the open position is C-shaped. This feature of being C-shaped in the open position is significant because it allows the housing of the cover member to be C-shaped and set around the top lid of an engine compartment. Thus, the folding top in

the folded position has reduced overall dimensions and is compatible with the characteristics of a motor vehicle having a rear or mid engine compartment especially one with a transparent engine lid.

Accordingly, EP '394 does not anticipate claim 36 and the § 102 rejection should be withdrawn.

In addition, in order to reach the invention as claimed by independent claim 36, one would have to completely disregard the teachings given in EP '394, which do not disclose or suggest a folding top assembly having a hollow central portion closed by a mobile closing body so as to be C-shaped in the open position. There would be no suggestion to discard these teachings without using the Applicant's own disclosure as a template in hindsight, and no such suggestion can be found in any of the references. As stated in MPEP § 2143.03, "to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art". Accordingly, independent claim 36, is nonobvious and patentable under § 103 in view of the cited documents.

Dependent claims 3-6, 8, 14-15, 27, 32-34 and 37 depending from independent claim 36 are also allowable for the same reasons.

In view of the foregoing Remarks, it is submitted that the claims as now appearing in this application are in proper form for allowance. A favorable action on the part of the Examiner is respectfully solicited. If, in the opinion of the Examiner, a

telephone conference would expedite prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

DICKINSON WRIGHT PLLC

A handwritten signature in black ink, appearing to read "John A. Artz", is written over a horizontal line.

John A. Artz

Registration No. 25,824

38525 Woodward Avenue, Suite 2000

Bloomfield Hills, MI 48304-5092

Phone: (248) 433-7200

Fax: (248) 433-7274

Dated: May 24, 2010

BLOOMFIELD 36575-4 1056053